

11 August 1988
OCA 2688-88

MEMORANDUM FOR: Chief, Logistics & Procurement Law Division/OGC

FROM: Legislation Division
Office of Congressional Affairs

SUBJECT: Consultant Registration and Reform Act of 1988,
H.R. 5158 and S. 2674

1. Attached for your review is a copy of the above-captioned bill (the House and Senate versions are identical). It aims to ensure full disclosure so as to protect the Government from conflicts of interest.

2. The bill provides that an agency may not award contracts more than \$25,000 for advisory and assistance services without prior publication of a notice describing the contract. Justification of the award is to be subsequently transmitted to the Inspector General. After completion of the contract, an evaluation of the performance of the contract is required. There is also a requirement to prepare and make available to the public a list of all outstanding contracts. Lastly, the General Counsel must review certain information to be filed by the consultant before a contract is awarded.

3. All requirements, except for that concerning review by the General Counsel, do not apply to contracts which involve sensitive foreign intelligence or foreign counterintelligence activities, sensitive law enforcement investigations or which are classified under the national security classification system.

4. It is possible that these bills will move before the end of the session. Accordingly, I ask that you determine whether they pose any problems for the Agency and contact me at your earliest convenience with your response.

Attachment



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and S. 2674

STAT OCA/LEG [] (11 August 1988)

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100TH CONGRESS
2D SESSION

H. R. 5158

To improve contracting procedures for procurements of advisory and assistance services by the Federal Government; to improve public access to information concerning such contracts and other contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1988

Mr. BENNETT (for himself and Mr. RIDGE) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To improve contracting procedures for procurements of advisory and assistance services by the Federal Government; to improve public access to information concerning such contracts and other contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Consultant Registration
5 and Reform Act of 1988".

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

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H. R. 5158

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2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Consultant Registration
5 and Reform Act of 1988".

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Federal procurement officials have not consist-
2 ently complied with procurement laws, regulations, and
3 management guidelines in awarding contracts for the
4 procurement of advisory and assistance services.

5 (2) Procurement practices relating to the procure-
6 ment of advisory and assistance services do not (A)
7 adequately provide for full and open competition, (B)
8 adequately prevent conflicts of interest, or (C) ade-
9 quately provide for public disclosure of the use and role
10 of contractors who provide such services and studies.

11 (3) Information regarding the Federal Govern-
12 ment's use of advisory and assistance services is not
13 maintained in a manner that results in helpful or mean-
14 ingful information being available to Congress, the ex-
15 ecutive branch, or the public.

16 (4) Federal Government agencies have not con-
17 sistently complied with the requirement in section 1114
18 of title 31, United States Code, to include in budget
19 justifications submitted to Congress the amounts re-
20 quested for consulting services, and the Inspector Gen-
21 eral (and comparable officials) of such agencies have
22 not consistently complied with the requirement in such
23 section to submit to Congress certain evaluations relat-
24 ing to contracts for consulting services.

1 (5) Full and open competition in the Federal pro-
2 curement process is consistent with the basis of the
3 free enterprise system and enables the Federal Govern-
4 ment to obtain maximum value for Federal procure-
5 ment expenditures.

6 (6) The costs of performing governmental func-
7 tions are borne by the taxpayer regardless of whether
8 the functions are performed in the private or public
9 sector.

10 (7) The integrity of the governmental process, es-
11 pecially when advisory and assistance services are used
12 in the performance of governmental functions, requires
13 full public disclosure of the use and role of contractors
14 who perform such functions.

15 (8) Legislation and oversight is necessary in order
16 to establish and implement consistent policies and prac-
17 tices needed for procurement of advisory and assistance
18 services.

19 **SEC. 3. POLICY.**

20 It is the policy of the United States that—

21 (1) Federal Government policymaking and deci-
22 sionmaking functions should be performed by accounta-
23 ble Federal Government officials;

1 (2) the procurement of advisory and assistance
2 services should be carried out in compliance with appli-
3 cable procurement laws and regulations; and

4 (3) Federal Government functions should be per-
5 formed using the most economical means available
6 while recognizing the inherently governmental nature
7 of certain activities.

8 **SEC. 4. DEFINITIONS.**

9 In this Act:

10 (1) The term "agency" has the same meaning as
11 is provided in section 552(f) of title 5, United States
12 Code.

13 (2) The term "contract" means (A) any agree-
14 ment, including any amendment to or modification of
15 an agreement, entered into by the Federal Government
16 for the procurement of property or services, and (B)
17 any letter authorizing the provision of property or serv-
18 ices to the United States prior to a specification of the
19 compensation for the provision of such property or
20 services.

21 (3) The term "contractor" means any person,
22 including, in the case of a business organization, any
23 affiliate of such organization and including any consult-
24 ant and any organization of consultants, which is a
25 party to a contract with the Federal Government.

1 (4) The term "report" means a written study,
2 plan, evaluation, analysis, manual, or similar docu-
3 ment, in draft or final form, which is prepared by a
4 contractor pursuant to a contract with an agency and
5 which is submitted to such agency or is submitted on
6 behalf of such agency to any other agency. Such term
7 does not include a billing document, invoice, or other
8 routine business transmittal made with respect to the
9 contract.

10 (5)(A) The term "advisory and assistance serv-
11 ices" means those services acquired by an agency from
12 any nongovernmental source, by contract, to support or
13 improve agency policy development, decisionmaking,
14 management, and administration, or to support or im-
15 prove the operation of management systems.

16 (B) Such term includes—

- 17 (i) management and professional services;
18 (ii) the conduct and preparation of studies,
19 analyses, and evaluations; and
20 (iii) engineering and technical services.

21 (6) The term "management and professional serv-
22 ices" means professional services relating to the man-
23 agement and control of programs, including—

- 24 (A) management data collection services;
25 (B) policy review and development services;

- 1 (C) program evaluation services;
2 (D) program management support services;
3 (E) program review and development serv-
4 ices;
5 (F) systems engineering services; and
6 (G) other management and professional serv-
7 ices of a similar nature which are not related to
8 any specific program.

9 (7) The term "studies, analyses, and evaluations"
10 includes the following:

11 (A) Any analysis or other examination of a
12 subject which—

13 (i) is undertaken to provide greater un-
14 derstanding of relevant issues and alterna-
15 tives regarding organizations, policies, proce-
16 dures, systems, programs, and resources; and

17 (ii) leads to conclusions or recommenda-
18 tions with respect to planning, programming,
19 budgeting, decisionmaking, or policy develop-
20 ment.

21 (B) With respect to a program of an agency,
22 any study initiated by or for the program manage-
23 ment office of the agency.

24 (C) A cost-benefit analysis, a data analysis
25 (other than a scientific analysis), an economic

study or analysis, an environmental assessment or impact study, a legal or litigation study, a legislative study, a regulatory study, a socioeconomic study, and a feasibility study which does not relate to construction.

(D) A geological study, a natural resource study, a scientific data study, a soil study, a water quality study, a wildlife study, and a general health study.

(E) Any similar study or analysis.

(8) The term "engineering and technical services" means the furnishing of advice or training to personnel in order to ensure the efficient and effective operation or maintenance of equipment and associated software by such personnel.

SEC. 5. PUBLIC NOTICE OF CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.

(a) IN GENERAL.—An agency may not award a contract for advisory and assistance services estimated to cost more than \$25,000 unless a notice describing such contract is published in the Commerce Business Daily at least 30 days before the award.

(b) EXCEPTION.—The head of an agency is not required by this subsection to transmit to the Secretary of Commerce a notice with respect to a contract for advisory and assistance

1 services if the agency's need for such services is of such an
2 unusual and compelling urgency that the United States
3 would be seriously injured as a result of delaying the award
4 of the contract until such a notice has been published.

5 (c) INAPPLICABILITY OF OTHER NOTICE EXCEP-
6 TIONS.—No exception to a contract notice requirement pro-
7 vided in any other provision of law shall apply to a notice
8 required under subsection (a).

9 SEC. 6. MONITORING PROCUREMENTS OF ADVISORY AND
10 ASSISTANCE SERVICES.

11 (a) CONTRACT AWARDS.—(1) Before an employee of an
12 agency awards a contract for advisory and assistance services
13 for an amount of \$25,000 or more on the basis of an unsolic-
14 ited proposal, such employee shall transmit to the Inspector
15 General of such agency or a comparable official, or in the
16 case of an agency which does not have an Inspector General
17 or a comparable official, the head of the agency or his desig-
18 nee, a written notice of the proposed contract award. The
19 notice shall include a description of the contract and the justi-
20 fication for the contract.

21 (2) Not later than 30 days after the date on which an
22 employee of an agency awards a contract for advisory and
23 assistance services for an amount of \$25,000 or more, such
24 employee shall transmit to the Inspector General of such
25 agency or a comparable official of the agency, or in the case

1 of an agency which does not have an Inspector General or a
2 comparable official, the head of the agency or his designee, a
3 justification for the award of such contract.

4 (b) CONTRACT MODIFICATIONS.—Whenever an em-
5 ployee of an agency modifies a contract for advisory and as-
6 sistance services and the modification of such contract in-
7 creases the amount of the contract by at least \$25,000, such
8 employee shall transmit to the Inspector General of such
9 agency or a comparable official of the agency, or in the case
10 of an agency which does not have an Inspector General or a
11 comparable official, the head of the agency or his designee, a
12 written notice of the modification. The notice shall include—

13 (A) a description of the original contract;

14 (B) a description of the modification; and

15 (C) the justification for the modification.

16 **SEC. 7. IDENTIFICATION OF REPORTS PREPARED BY CON-**
17 **TRACTORS.**

18 Each report submitted to an agency by a contractor,
19 and each agency report which is substantially derived from or
20 includes substantial portions of any such contractor report,
21 shall include the following information:

22 (1) The name and business address of the con-
23 tractor.

24 (2) The total amount of the contract.

1 (3) A statement of whether the contract was
2 awarded using competitive or noncompetitive proce-
3 dures.

4 (4) The name of the office which authorized the
5 award of the contract.

6 (5) In any case in which a contractor uses a sub-
7 contractor to prepare any portion of the report submit-
8 ted by the contractor, the name and business address
9 of the subcontractor and the amount paid to the sub-
10 contractor for preparation of the report.

11 (6) The names of all employees of the contractor,
12 and any subcontractor, who substantially contributed to
13 the preparation of the report submitted by the con-
14 tractor.

15 **SEC. 8. EVALUATION OF CONTRACTOR PERFORMANCE.**

16 (a) **EVALUATION.**—Within 90 days after the completion
17 of the performance of a contract for advisory and assistance
18 services, the head of the agency that awarded the contract
19 shall prepare a written evaluation of the contractor's per-
20 formance. An evaluation is not required under this subsection
21 in the case of a contract that does not exceed \$25,000.

22 (b) **CONTENT OF EVALUATION.**—An evaluation of con-
23 tractor performance under subsection (a) shall include the fol-
24 lowing information:

1 (1) A summary description of the performance of
2 the contractor.

3 (2) An assessment of the performance of the con-
4 tractor based on the terms and specifications of the
5 contract performed.

6 (3) Any differences between the cost of the con-
7 tract and the time for completion of the contract as
8 provided in or estimated for such contract at the time
9 of contract award and the actual cost of the contract
10 and the actual time for completion of the contract, re-
11 spectively, and a statement of the reasons for any such
12 difference.

13 (4) The purposes for which and the manner in
14 which the services procured and any reports received
15 under such contract are used by the agency.

16 (c) RECORD OF EVALUATION.—The head of an agency
17 shall include each evaluation required by subsection (a) in the
18 records maintained by the agency in connection with the con-
19 tract to which the evaluation relates, and shall maintain
20 copies of all such evaluations in one location in the agency
21 that is readily accessible to the public.

22 (d) CONTRACTOR'S RIGHTS.—After preparing an eval-
23 uation of contractor performance under this section, the head
24 of an agency shall promptly transmit to the contractor a copy
25 of the evaluation together with a notice stating that the con-

1 tractor may, within 10 days after receiving such copy, trans-
2 mit comments to the agency concerning such evaluation. Any
3 such comments shall be made a part of the evaluation as a
4 supplement.

5 **SEC. 9. BUDGET INFORMATION.**

6 (a) **AGENCY SUBMISSIONS.**—The head of each agency
7 shall include with the request for regular appropriations for
8 each fiscal year submitted to the President pursuant to sec-
9 tion 1108 of title 31, United States Code, an itemized state-
10 ment of the amounts requested by the agency for procure-
11 ment of advisory and assistance services in such fiscal year.
12 The statement shall identify such amounts according to the
13 same subfunctional categories to be used by the President in
14 the submission of the budget for such fiscal year pursuant to
15 section 1105 of title 31, United States Code, and, within
16 each such category, shall identify such amounts according to
17 classifications for procurement of—

- 18 (1) management and professional services;
- 19 (2) studies, analyses, and evaluations;
- 20 (3) engineering and technical services; and
- 21 (4) other advisory and assistance services.

22 (b) **BUDGET SUBMISSIONS.**—The budget submitted by
23 the President to Congress for each fiscal year under section
24 1105 of title 31, United States Code—

1 (1) shall set forth separately, within each subfunc-
2 tional category used in such budget, requests for new
3 budget authority for, and estimates of outlays by, each
4 agency for procurement of advisory and assistance
5 services; and

6 (2) within each such category, shall identify such
7 requests and estimates according to classifications for
8 procurement of—

9 (A) management and professional services;

10 (B) studies, analyses, and evaluations;

11 (C) engineering and technical services; and

12 (D) other advisory and assistance services.

13 (c) **JUSTIFICATIONS FOR REVISIONS OF BUDGET RE-**
14 **QUESTS.**—Within 60 days after the President transmits to
15 Congress a revision of any request for new budget authority
16 or of any estimate of outlays included in the budget for any
17 fiscal year pursuant to subsection (b), the head of the agency
18 affected by such revision shall prepare and transmit to Con-
19 gress an analysis of such revised request or of such revised
20 estimate, as the case may be, and a statement justifying the
21 need for such revised request or such revised estimate.

22 **SEC. 10. FEDERAL PROCUREMENT DATA SYSTEM.**

23 Section 1114 of title 31, United States Code, is amend-
24 ed by adding at the end the following:

1 “(c)(1) The head of each agency shall provide the Feder-
2 al Procurement Data System timely, complete, and accurate
3 information on (A) contracts awarded by such agency primar-
4 ily for the procurement of consulting services, and (B) all
5 procurements of consulting services under contracts awarded
6 by such agency not primarily for the procurement of consult-
7 ing services.

8 “(2) The information provided under paragraph (1) shall
9 include the amounts expended for the procurement of consult-
10 ing services specified separately for contracts described in
11 clause (A) of such paragraph and for procurements described
12 in clause (B) of such paragraph.

13 “(3) This subsection shall not apply to a contract for
14 consulting services, or any data, reports, or other material
15 pertaining to such services, if the contract—

16 “(A) involves sensitive foreign intelligence or for-
17 eign counterintelligence activities;

18 “(B) involves sensitive law enforcement investiga-
19 tions; or

20 “(C) is classified under the national security clas-
21 sification system.

22 “(d) In this section:

23 “(1) The term ‘consulting services’ includes advi-
24 sory and assistance services.

1 “(2)(A) The term ‘advisory and assistance serv-
2 ices’ means those services acquired by an agency from
3 any nongovernmental source, by contract, to support or
4 improve agency policy development, decisionmaking,
5 management, and administration, or to support or im-
6 prove the operation of management systems.

7 “(B) Such term includes—

8 “(i) management and professional services;

9 “(ii) the conduct and preparation of studies,
10 analyses, and evaluations; and

11 “(iii) engineering and technical services.

12 “(3) The term ‘management and professional serv-
13 ices’ means professional services relating to the man-
14 agement and control of programs, including—

15 “(A) management data collection services;

16 “(B) policy review and development services;

17 “(C) program evaluation services;

18 “(D) program management support services;

19 “(E) program review and development
20 services;

21 “(F) systems engineering services; and

22 “(G) other management and professional
23 services of a similar nature which are not related
24 to any specific program.

1 “(4) The term ‘studies, analyses, and evaluations’
2 includes the following:

3 “(A) Any analysis or other examination of a
4 subject which—

5 “(i) is undertaken to provide greater un-
6 derstanding of relevant issues and alterna-
7 tives regarding organizations, policies, proce-
8 dures, systems, programs, and resources; and
9 “(ii) leads to conclusions or recommen-
10 dations with respect to planning, program-
11 ming, budgeting, decisionmaking, or policy
12 development.

13 “(B) With respect to a program of an
14 agency, any study initiated by or for the program
15 management office of the agency.

16 “(C) A cost-benefit analysis, a data analysis
17 (other than a scientific analysis), an economic
18 study or analysis, an environmental assessment or
19 impact study, a legal or litigation study, a legisla-
20 tive study, a regulatory study, a socioeconomic
21 study, and a feasibility study which does not
22 relate to construction.

23 “(D) A geological study, a natural resource
24 study, a scientific data study, a soil study, a water

1 quality study, a wildlife study, and a general
2 health study.

3 “(E) Any similar study or analysis.

4 “(5) The term ‘engineering and technical services’
5 means the furnishing of advice or training to personnel
6 in order to ensure the efficient and effective operation
7 or maintenance of equipment and associated software
8 by such personnel.”.

9 **SEC. 11. PUBLIC AVAILABILITY OF INFORMATION ON**
10 **CONTRACTS.**

11 (a) **LISTS AND JUSTIFICATIONS.**—(1)(A) Not later than
12 November 1, 1989, the head of each agency shall compile a
13 list of all contracts awarded by the agency during fiscal year
14 1988 and a separate list of all contracts entered into by the
15 agency for which performance has not been completed at the
16 time of the preparation of such list. Each list shall be updat-
17 ed, on a quarterly basis, with information on contracts
18 awarded since the list was prepared.

19 (B) Each list of contracts compiled and updated by the
20 head of an agency under subparagraph (A) shall include, for
21 each such contract, the following information:

22 (i) The contract identification number assigned by
23 the agency.

24 (ii) The contractor’s name.

1 (iii) The date of award and the estimated comple-
2 tion date.

3 (iv) The original and current amounts to be paid
4 by the agency under the contract.

5 (v) A brief description of the work to be per-
6 formed.

7 (2) The head of each agency shall maintain a written
8 justification for each contract awarded by the agency.

9 (3) The head of each agency shall permit the public to
10 inspect and make copies of the list prepared and updated
11 under paragraph (1) and the justifications maintained under
12 paragraph (2). The agency may impose a reasonable charge
13 for the costs of making such copies.

14 (b) OTHER INFORMATION.—Except as otherwise pro-
15 vided by law, the following information shall be available to
16 the public upon request:

17 (1) Copies of contracts awarded by an agency.

18 (2) In the case of a contract for advisory and as-
19 sistance services, the name and qualifications of each
20 person designated in such contract to perform such
21 contract.

22 (3) In the case of a contract for advisory and as-
23 sistance services awarded on a sole source basis, the
24 justification for awarding such contract on a sole
25 source basis.

1 SEC. 12. PROHIBITIONS AND REQUIREMENTS RELATING TO
2 REGISTRATION OF CONSULTANTS.

3 (a) PROHIBITED CONTRACT AWARDS INVOLVING CON-
4 SULTANTS.—(1) The head of an agency may not award a
5 contract for the procurement of advisory and assistance serv-
6 ices to a consultant unless—

7 (A) such consultant complies with the registration
8 requirements of this section; and

9 (B) the General Counsel of the agency has re-
10 viewed the information registered by such consultant
11 and such other information as may be available to the
12 head of the agency and determined that, with respect
13 to such contract, the consultant does not have a con-
14 flict of interest that could be prejudicial to the interests
15 of the United States.

16 (2) The head of an agency may not award a contract to
17 any person submitting an offer to such agency unless the of-
18 feror certifies that each consultant that has furnished advice,
19 information, direction, or assistance to the offeror in support
20 of the preparation or submission of the offer has complied
21 with the registration requirements of this section.

22 (b) REGISTRATION REQUIREMENTS.—(1) A consultant
23 submitting an offer for a contract referred to in subsection
24 (a)(1) shall register with an officer or employee designated by
25 the head of the agency awarding such contract. The consult-

1 ant shall register within such time after submitting the offer
2 as the head of that agency shall prescribe in regulations.

3 (2) A consultant retained by a person in connection with
4 the preparation or submission of an offer for a Federal Gov-
5 ernment contract shall register with an officer or employee
6 designated by the head of the agency awarding such contract.
7 The consultant shall register within such time after the reten-
8 tion of such consultant as the head of that agency shall pre-
9 scribe in regulations.

10 (3) A consultant who is registered with an agency under
11 this subsection with respect to one contract shall update the
12 registered information whenever the consultant submits an
13 offer for another contract of such agency (if such contract is
14 for the procurement of advisory and assistance services) and
15 whenever the consultant is retained by a person in connection
16 with the preparation or submission of an offer for another
17 contract of such agency. The consultant shall update such
18 information within such time as the the head of that agency
19 shall prescribe in regulations.

20 (c) INFORMATION REQUIRED.—A person registering as
21 a consultant under this section shall furnish the following in-
22 formation:

23 (1) The name and address of the consultant.

1 (2) A description of the nature of the services fur-
2 nished by the consultant in the normal course of the
3 consultant's business.

4 (3) A list of all public and private clients for
5 which the consultant has furnished advisory and assist-
6 ance services, including foreign and domestic clients.

7 (4) A description of the services furnished each
8 such client by the consultant.

9 (5) A statement of whether the consultant has
10 ever been convicted of a felony and whether, at the
11 time of the registration, there is pending any indict-
12 ment or information charging the consultant with a
13 felony.

14 (6) A statement of whether, at the time of the
15 registration, the consultant is ineligible, by reason of
16 suspension or debarment, to be awarded a contract by
17 the Federal Government.

18 (7) A certification that, at the time of the registra-
19 tion, the consultant and all employees of the consultant
20 are not in violation of any applicable requirement set
21 out in, and are not engaged in any conduct prohibited
22 by, sections 2397, 2397a, 2397b, and 2397c of title
23 10, United States Code, any similar provision of law,
24 and any contract term required by such section 2397c
25 (or any similar provision of law).

1 (d) The Inspector General of each agency or, in the case
2 of an agency that does not have an Inspector General, the
3 head of such agency shall monitor the compliance of consult-
4 ants with the registration requirements of this section and
5 shall submit to Congress an annual report containing a dis-
6 cussion of the extent of such compliance. The first report of
7 each agency shall be submitted not later than one year after
8 the date of the enactment of this Act.

9 (e) Suspension and debarment proceedings shall be initi-
10 ated in the case of each consultant who fails to comply with
11 the registration requirements of this section.

12 (f) In this section, the term "consultant" means any
13 person (including, in the case of a business organization, any
14 affiliate of such organization) that—

15 (1) furnishes or offers to furnish advisory and as-
16 sistance services; or

17 (2) furnishes advice, information, direction, or as-
18 sistance to any other person in support of the prepara-
19 tion or submission of an offer for a Federal Govern-
20 ment contract by such other person.

21 **SEC. 13. EXCEPTIONS.**

22 Sections 5, 6, 7, 8, 9, and 11 shall not apply to a con-
23 tract for advisory and assistance services, or any data, re-
24 ports, or other material pertaining to such services, if the
25 contract—

1 (1) involves sensitive foreign intelligence or for-
2 eign counterintelligence activities;

3 (2) involves sensitive law enforcement investiga-
4 tions; or

5 (3) is classified under the national security classifi-
6 cation system.

7 **SEC. 14. EFFECTIVE DATE.**

8 This Act and the amendments made by this Act shall
9 take effect 180 days after the date of the enactment of this
10 Act.

○